U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12823340

Date: JAN. 29, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an entrepreneur, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not satisfy any of the initial evidentiary criteria for this classification, of which he must meet at least three. The Director further found that the Petitioner did not establish that he would continue work in his area of expertise in the United States. We dismissed the Petitioner's appeal based on a determination that he did establish that he meets at least three initial evidentiary criteria. The matter is now before us on a combined motion to reopen and motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, the Petitioner has not met this burden and we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if an individual has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. Section 203(b)(1)(A)(i) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

III. ANALYSIS

The issue before us is whether the Petitioner has presented new facts to warrant reopening his appeal and/or established that our decision to dismiss his appeal was based on an incorrect application of law or USCIS policy. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

A. AAO Decision

In dismissing the Petitioner's appeal, we acknowledged his claim that he had submitted evidence relating to eight of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). We evaluated the evidence submitted in support of six of these criteria, including: lesser nationally or internationally recognized awards; membership in associations that require outstanding achievements; published materials in major media; judging the work of others; original business contributions of major significance; and display of work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(i)-(v) and (vii). Based on our *de novo* review, we reached the same conclusion as the Director and determined that the Petitioner did not establish that he meets any of the six criteria discussed.

Although the Petitioner also claimed to meet the criteria related to leading and critical roles and high salary or other significantly high remuneration at 8 C.F.R. § 204.5(h)(3)(viii) and (ix), we reserved those criteria and did address them in our decision. The regulations require the Petitioner to establish that he meets *at least three* of the criteria at 8 C.F.R. 204.5(h)(3)(i)-(x) in order to meet the initial evidence requirements for this classification. Even if we had determined that the Petitioner met the

remaining claimed criteria, our decision to dismiss the appeal would have been unchanged, as he could not satisfy the initial evidence requirements by meeting only two criteria. For the same reason, we did not reach the issue of whether the Petitioner established that he would continue to work in his area of extraordinary ability in the United States under section 203(b)(1)(A)(ii). *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

B. Motion to Reconsider

On motion, the Petitioner asserts that we misapplied law and USCIS policy to the facts presented, failed to give sufficient weight to reference letters and other relevant evidence submitted in support of the petition, and imposed novel substantive evidentiary requirements beyond those set forth in the regulations in evaluating the Petitioner's claims made under the criteria at 8 C.F.R. § 204.5(h)(3). We address his specific claims below.[1]

> *Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

On appeal, the Petitioner argued that he met this criterion based upon: (1) an award received by [redacted] a logistics company owned by the Petitioner), and (2) a claimed award received by the [redacted] during his tenure as its managing director. With respect to the award granted to [redacted] the Petitioner provided evidence that his company received a recognition award plaque from [redacted] for "the success and important receipt of the [redacted]" The evidence also included a 2019 letter from [redacted] of [redacted] confirming that the Petitioner acted in a "key role" as "Contract and Project Manager" for [redacted] on the project. [redacted] notes that the Petitioner's contribution of "delivery of the equipment on time, on budget and without incidents . . . has been endorsed by a recognition award."

In determining that the Petitioner did not establish that he meets this criterion based on [redacted]'s award from [redacted] we noted that, according to the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the petitioner is the actual recipient of the awards or prizes.[2] We determined that the Petitioner was not the recipient of the award, and that [redacted]'s letter, written four years after the award was issued, did not indicate the awarding entity's intent to recognize the Petitioner individually for his work. We also determined that the Petitioner did not

[1] On motion, the Petitioner does not contest our determination that he did not submit evidence that satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv), which relates to participating as a judge of the work of others in the same filed and 8 C.F.R. § 204.5(h)(3)(vii), which relates to the display of an individual's work at artistic exhibitions or showcases. Therefore, we deem these issues to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009); *see also See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

[2] *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that for this criterion, the focus should be on an individual's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes)."

provide sufficient evidence to establish that the recognition plaque [redacted] received from [redacted] for its successful performance on the referenced project is a nationally or internationally recognized award for excellence in the field.

On motion, the Petitioner's arguments are limited to our determination that he did not establish that he was the recipient of the recognition award given to [redacted] by [redacted] In this regard, the Petitioner asserts that we mischaracterized the content of [redacted]'s letter, inappropriately faulted the Petitioner for not providing a letter from [redacted] issued at the time of the award, and failed to consider industry and cultural norms.[3] The Petitioner maintains that [redacted]'s letter indicates [redacted]'s intent to recognize him for his individual work, and that the regulations do not require that an individual's name appear on a physical award or a contemporaneous letter declaring the awarding entity's intent.

However, even if we determined based on these arguments that the Petitioner should be recognized as the recipient of the award from [redacted] the motion does not address how we misapplied the law or USCIS policy in determining that the evidence did not establish that the recognition plaque from [redacted] is a nationally or internationally recognized award for excellence in the field as required by the regulation at 8 C.F.R. § 204.5(h)(3)(i). In reaching this determination, we acknowledged evidence demonstrating that [redacted] was the second-largest [redacted] company according to a list published by *Forbes* in 2017. However, the fact that [redacted] is an internationally recognized company does not lead to a conclusion that a project-specific recognition plaque from one of its subsidiaries is a nationally or internationally award or prize for excellence in the industry. Again, the Petitioner has not addressed this separate determination on motion and therefore has not shown that the award from [redacted] meets all elements of this criterion.

We made similar determinations with respect to the claimed [redacted]' award received by [redacted] in 2008. The Petitioner submitted evidence that, during his tenure as [redacted]'s managing director, the [redacted] received a "good" rating based on "[a] survey with 200 executives from user companies completed in January by the Center for Studies in Logistics (CEL), linked to the postgraduate nucleus of the [redacted]" We acknowledged a letter from [redacted] management indicating that the Petitioner was instrumental to the [redacted]'s receipt of this recognition, but observed that the Petitioner was not the recipient of the recognition. We also determined that the evidence did not establish that this recognition is a "nationally or internationally recognized prize or award." We noted that although the CEL survey rated [redacted] on a national basis, the evidence did not establish that a favorable rating from this survey is recognized as a nationally or internationally recognized award for excellence. On motion, the Petitioner states that "[i]t can be understood that the [redacted]' for an entire region in Brazil and being voted [redacted] across all the [redacted] in Brazil is worthy of national importance."

As noted, the fact that the results from the CEL survey were based on data collected for 18 [redacted] throughout Brazil does not establish that the "good" rating received by [redacted] was a nationally recognized "prize or award" for excellence. There is no evidence that any prize or award was given to those ports that received a "good" rating or a certain ranking. Nor does the evidence establish that

[3] The Petitioner asserts that it is "widely accepted within the [redacted] industry both in the U.S. and abroad to issue an award in name of the corporation but in recognition of one specific individual's work, primarily, the individual whom owns the corporation at the time the award is issued . . . ."

the survey resulted in [redacted] being named [redacted]; the article in which the results of the survey were published indicated that it ranked fourth out of 18 Brazilian [redacted] with the top three receiving "excellent" ratings.

Based on the above, the Petitioner has not established that we misapplied the law or USCIS policy in concluding that he did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner asserted eligibility for this criterion based on his membership on the [redacted] and based on his role with [redacted] described as the leasing company for [redacted] in the [redacted] Brazil. We acknowledged a letter from [redacted] director of the [redacted], who stated that [redacted] "require[s] excellence of our members," noted that the Petitioner is an entrepreneur of "outstanding achievements" in the [redacted] market, and summarized some of the Petitioner's accomplishments. The Petitioner argued on appeal that this letter "demonstrates that not just any professional within the industry may satisfy the standards for the Council's membership."

With respect to [redacted] he submitted a letter from its president [redacted] who notes that the Petitioner "became director of [redacted] on his own merit referred by [redacted] due to his performance" She notes that [redacted] referred [the Petitioner] to [redacted] "with knowledge that we indeed require outstanding achievement of our team" and indicates that [redacted] accepted him "on the basis that his contributions are of excellence."

We determined that the Petitioner did not meet this criterion because the statements of [redacted] and [redacted] did not provide detailed information to establish either organization's membership requirements, nor were they accompanied by any corroborating documentation, such as the bylaws of [redacted] or [redacted] Further, we emphasized that the submitted letters did not address all elements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) as they do not indicate whether membership in either organization requires outstanding achievements as judged by recognized national or international experts in their fields.

On motion, the Petitioner objects to our suggestion that corroborating evidence such as the bylaws of [redacted] or [redacted] should have been provided in addition to the referenced letters, noting that such evidence is not mentioned in the regulation and cannot be imposed as an additional requirement. It is the Petitioner's burden to establish that he meets each element of the criterion at 8 C.F.R. § 204.5(h)(3)(ii). Our decision reflects that we did not impose a requirement that the Petitioner submit bylaws for these organizations. Rather, we noted the need for corroborating evidence of the membership requirements because the letters from representatives of these organizations lacked detailed information regarding these requirements and the manner in which membership is granted. The record reflects that the Petitioner was afforded the opportunity to submit bylaws or any other type of relevant evidence in response to a request for evidence prior to the petition's denial. The Board of Immigration Appeals (the Board) has stated: "We not only encourage but require the introduction of

corroborative testimonial and documentary evidence, where available." *Id.*; *see also*, *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility).

Further, as noted, the letters from [redacted] and [redacted] did not address the separate requirement that the Petitioner establish that recognized national or international experts are charged with judging whether a prospective member satisfies the organization's membership requirements. Accordingly, even if we found the letters alone sufficient to establish that one or both of these organizations requires outstanding achievements as a necessary condition of membership, we could not conclude that the criterion had been met. For these reasons, the Petitioner not established that we misapplied the law or USCIS policy in concluding that he did not satisfy this criterion.

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

In evaluating this criterion, we acknowledged that the Petitioner submitted copies of more than 20 articles published in six Brazilian newspapers. We identified several reasons for reaching a conclusion that the evidence did not satisfy all requirements of this criterion. We noted that five of the articles do not mention the Petitioner by name, while the remaining articles identify him but are about the [redacted]'s business activities and not about him. Further, we determined that 13 of the articles that did mention the Petitioner did not include the author or date of the material as required by 8 C.F.R. § 204.5(h)(3)(iii). Finally, we determined that the Petitioner did not meet his burden to establish that any of the articles were published in professional or major trade publications or other major media. In this regard, we noted that he provided supporting documentation regarding only one of the six newspapers (*Gazeta Mercantil*) but did not include circulation figures for the publication to establish its major medium status consistent with this regulatory criterion.[4]

On motion, the Petitioner refers to an unpublished decision in which we determined that the self-petitioner (also an entrepreneur seeking classification as an individual of extraordinary ability) met this criterion based on "a certified translation of an article published in the Hungarian edition of [redacted] reflecting published material about him in a major medium." The Petitioner emphasizes that in the referenced decision, "the AAO did not consider or require any additional supporting evidence, other than the article itself, to determine that the entrepreneur met his burden on this issue." He contends that his evidence is sufficient under this same analysis, "as evidence was submitted detailing 25 major media publications discussing [the Petitioner] and corroborative evidence was submitted detailing how they qualified as major media." In response to our determination that none of the submitted articles were about the Petitioner, he refers to another unpublished decision, stating that we determined in that matter that "published material may still fulfill this criterion even if it does not discuss the content of a person's work, but rather some resulting award or grant received because of the work."

---

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 7 (providing that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

These two decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Further, the facts here can be distinguished. As discussed above, the Petitioner did not, as he now claims, provide corroborative evidence to establish that the newspaper articles he submitted under this criterion were published in either major media or in other qualifying publications (either professional or major trade publications). Although he implies that we overlooked or disregarded such evidence, he provides no specific reference to documentation that we failed to consider in our evaluation of this criterion. The articles submitted here were from various Brazilian newspapers and none of them could be readily characterized as qualifying publications without evidence regarding their relative circulation statistics and information regarding the intended audience. Therefore, even if we determined that one or more of the articles that briefly mentions the Petitioner could be considered published material "about" him, it remains that the evidence does not establish that any of the articles were published in professional, major trade publications or other major media.

In addition, the Petitioner's motion does not address other deficiencies discussed in our decision, such as the fact that 18 of the submitted articles either contained no reference at all to the Petitioner or lacked other information required by the plain language of the regulation, specifically the date and author of the published material.

For these reasons, the Petitioner has not established that we incorrectly applied the law or USCIS policy in concluding that he did not satisfy this criterion.

> *Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner claimed that recommendation letters submitted from his colleagues reflect his business-related contributions in his field. Specifically, he claimed that the evidence was sufficient to establish that his contributions included bringing major [redacted] companies (and revenue from the [redacted] sector) to Brazil and creating employment opportunities for "thousands of Brazilian Citizens."

We evaluated all referenced letters and discussed several of them in our decision, acknowledging that the letters praised the Petitioner's entrepreneurial work with his companies, mentioned that he contributed to a project at [redacted] that generated 800 jobs at the port, and recognized him as "a pioneer in business and maritime trade in Brazil." However, we determined that the letters did not establish how his activities were original contributions that remarkably impacted or were remarkably influential in his field as a whole, or how his work is viewed by the field, beyond the scope of his own companies and business contacts.

We also emphasized in our decision that demonstrating ability as a skilled entrepreneur is not, in an of itself a contribution of major significance. We determined that the evidence did not demonstrate the widespread implementation of his work or otherwise establish that he has made an original contribution of major significance in the field.

The Petitioner's brief in support of the motion to reconsider does not clearly address our specific reasons for determining that he did not meet this criterion or point to any particular evidence submitted in support of the criterion that we overlooked. The Petitioner does, however, generally discuss the letters submitted in support of the petition, noting that they are "nuanced, coherent, sufficiently crafted and provide legitimate insight into [his] extraordinary abilities making it more likely than not that he is small percentage of individuals who have risen to the very top of their field of endeavor." He maintains that "it can be readily ascertained from the insight provided in the letters submitted that [his] contributions and abilities rise to the level not readily ascertainable by others within his industry." Finally, he argues that "any further explanation of his contributions would result in an overly burdensome level of writing and specificity that is not required by law, thereby making it an entirely novel evidentiary standard."

For purposes of establishing that the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(v), the evidence must establish that he has made original contributions of major significance in the field. The Petitioner argues that the letters establish his extraordinary ability, but an evaluation of whether he has established his extraordinary ability is a separate determination that is only addressed if a petitioner satisfies the initial evidence requirements by meeting three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner's assertion that it would be overly burdensome to provide any additional information regarding his contributions does not sufficiently explain how we misapplied the law or USCIS policy in evaluating this criterion. In fact, we specifically cited to USCIS policy which provides that letters have more probative value when they "specifically articulate how the [petitioner's] contributions are of major significance to the field" and discuss their "impact on subsequent work."[5] We did not disregard the letters submitted in support of the petition; we determined that they lacked the type of information needed to reach a favorable determination with respect to this specific criterion.

Accordingly, the Petitioner has not established that we made an incorrect determination with respect to this criterion.

Based on the foregoing discussion, we conclude Petitioner has either not addressed or not submitted legal arguments to overcome our conclusions with respect to any of the six criteria that we addressed in our appellate decision. As noted, we did not reach the merits of the Petitioner's arguments on appeal with respect to the two remaining claimed criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix) because doing so could not change the outcome of the decision. Even if we determined that he submitted evidence to establish that he meets those two criteria, he could not succeed on a claim that he satisfied the initial evidence requirement for this classification, which requires him to show that he meets three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

We acknowledge that the Petitioner addresses the merits of the evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix) at some length in his brief in support of this combined motion. With respect to the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix), he maintains that our decision not to discuss this criterion in our decision supports his argument that "due process was not given" to him in this matter. However, he does establish how we misapplied the law or policy by declining to address two criteria that were not relevant to the outcome of our decision. As we explained above, federal agencies, like courts are not generally required to make findings and decisions

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 8-9.

unnecessary to the results they reach. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976). The Petitioner has not established how we erred by reserving these issues. Nor has the Petitioner demonstrated any resultant prejudice such as would constitute a due process violation. *See, e.g.*, *Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

Had the Petitioner overcome our previous determination with respect to one or more of the other six claimed criteria with this motion, we would address the merits of the Petitioner's claims regarding the criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix). However, as he has not done so, we will not address those issues here.

For the reasons discussed above, we will dismiss the motion to reconsider.

C. Motion to Reopen

In support of his motion to reopen, the Petitioner submits three new exhibits: (1) a newly prepared expert opinion letter from [redacted] an associate dean at the University [redacted] (2) a "proper translation" of the above-referenced award issued by [redacted] to [redacted] and (3) a personnel chart detailing the Petitioner's position at [redacted] and intended to support his claim that he satisfies the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii).

In his brief, the Petitioner states that the supplemental expert opinion from [redacted] "corroborates the claims alleged by those pieces of testimonial comparable evidence submitted in support of [his] petition and support[s] those facts which are the basis of these motions and specifically indicate why [he] is an alien of extraordinary ability." [redacted]s opinion letter provides a detailed discussion of the Petitioner's business experience, qualifications and achievements. He concludes that the Petitioner "has extraordinary ability in the entrepreneurship field and has satisfied at least five of the criteria of the USCIS for classification as an Alien of Extraordinary Ability."

We may, in our discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* Here, although the [redacted] states that the Petitioner meets five of the evidentiary criteria for this classification, he does not cite to the regulatory criteria or explain how the Petitioner meets each element of these criteria. For example, he opines that the Petitioner has received "several internationally recognized awards" but does not specify which evidence supports his conclusion that the [redacted] rating that [redacted] received from the CEL survey or the recognition plaque [redacted] received from [redacted] qualify as "internationally recognized" awards. As already discussed, the fact that [redacted] is an internationally recognized company does not lead to a conclusion that any project-related recognition a [redacted] company gives to a business collaborator is an internationally recognized award within the meaning of 8 C.F.R. § 204.5(h)(3)(i). His conclusion that the Petitioner satisfies the membership criterion is similarly lacking in detail as to how the Petitioner's memberships satisfied all elements of the regulatory language at 8 C.F.R. § 204.5(h)(3)(ii) and does not overcome the conclusions we reached when we applied that regulation to the facts presented.

Further, we are ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* [redacted]s letter does not provide new facts that would overcome our determination with respect to the four criteria discussed above.

The remaining new evidence submitted on motion includes a newly prepared translation of the award given to[redacted] by[redacted] While this evidence addresses a deficiency noted in our discussion of the awards criterion in our appellate decision, our determination did not rest on the insufficiency of the previously submitted translation. Finally, the new evidence pertaining to the Petitioner's role in [redacted]s organizational hierarchy does not address any of the six criteria which we discussed in our appellate decision and therefore does not overcome our reasons for dismissal of the appeal.

Finally, we acknowledge that the Petitioner requests that the motion to reopen "be accepted on the basis of ineffective assistance of counsel." Specifically, counsel states in his brief that prior counsel has been "unable and unwilling" to provide the Petitioner with the brief and/or documentation he submitted in support of the appeal and speculates that prior counsel may have neglected to file a brief. There is no further reference to the ineffective assistance claim in the brief on motion.

Although the Petitioner's new counsel speculates that prior counsel may have failed to submit a brief in support of the appeal, the record reflects that prior counsel did in fact provide a timely brief that we considered in rendering our appellate decision. The Petitioner does not otherwise explain why the matter should be reopened based on ineffective assistance of prior counsel.

For the reasons discussed, we will dismiss the motion to reopen.

IV. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The combined motion to reopen and reconsider will be dismissed for these reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.